

**2004 US Forest Service Forest Planning Regulations**

**Hearing of the House Agriculture Committee**

**May 25, 2005**

**Testimony of Dr. Don W. Floyd**

**on behalf of**

**the Society of American Foresters**

Mr. Chairman, my name is Don Floyd. I am a professor of forest and natural resources policy at the State University of New York's College of Environmental Science and Forestry. It is a privilege to appear before Committee on Agriculture today representing the Society of American Foresters. We have submitted written testimony for the record. What I offer today is brief comments that summarize some of the salient points on the new national forest planning rules.

First: We believe the new regulations are an incremental improvement in the planning process. The focus on forest sustainability aligns the National Forest System with national and global initiatives. We believe the Administration and the Forest Service should be congratulated for their willingness to adopt an environmental management system. We have been patient advocates for increasing attention on environmental and programmatic monitoring.

Second: Having said that, we believe these incremental changes cannot resolve the fundamental problem that the Forest Service and the Bureau of Land Management face: clarifying their mission.

The forest planning process has become a complicated and time-consuming endeavor for the federal land management agencies, particularly the Forest Service. We are encouraged to see efforts in the new regulations to attempt to streamline the process, including a new categorical exclusion for forest planning. The exclusion will remove the need for the agency to prepare an environmental impact statement or environmental assessment. The regulations instead shift the analysis of environmental effects to a program-level assessment. This move hinges on the fact that forest plans do not normally result in actual, on-the-ground activity; they only project activities, and then subsequent, project-specific analysis is completed. We believe this will allow the Forest Service to

look at real-time impacts of projects rather than try to predict these impacts before projects are even identified.

We also believe the inclusion of environmental management systems in the forest planning process will improve the accuracy and timeliness of information used to make decisions and will catalyze the agency's ability to monitor and adapt to real-time conditions. We hope that this process will allow the Forest Service to better tie with other monitoring efforts underway that address sustainability across the forested landscape, such as the Montreal Process Criteria and Indicators and efforts in state agencies and on private land. Although an EMS will improve the process, it will take time for agency personnel to adapt to this new system.

With other rulemaking underway such as the new roadless rule, the Forest Service has acknowledged the role state's can and should play in federal land management decisions. Further developing this idea beyond just roadless areas, to include all federal lands, would help address the role of, and set goals for, federal lands within landscapes of multiple ownerships. We urge the Forest Service to move forward with its planning processes with these ideas in mind.

Additionally, we agree with the focus in the new rule on the use of the most current, up to date science. SAF can play a key role in the gathering and synthesizing of scientific information and will continue to work with the Forest Service to create a mechanism to make this happen. A system similar to how the medical profession gathers information for clinical practice guidelines could be considered.

The regulations also take an ecosystem-scale approach to providing for species diversity, rather than a species-specific approach. This means that efforts to conserve species will mostly be accomplished by managing forests in a comprehensive manner rather than tied to one species' needs. The exception to this is endangered and threatened species, which will receive special attention. We believe this approach is an improvement over previous approaches because of the interconnected nature of ecosystems and the need to examine all components of an ecosystem when providing species protection.

These are just a few of the improvements included in the regulations. We would, however, like to reiterate some cautions with the new regulations. These regulations mark a substantial change from previous planning regulations, making it necessary for the

Forest Service to essentially retrain its personnel on some aspects of planning. Additionally, we are concerned about the agency's capacity to implement these new regulations because of significant declines in the agency's forestry expertise. Many forestry experts are retiring from the agency and are not being replaced with people of comparable expertise. This is a significant concern given that now, more than ever, the agency will need people with the broad expertise and comprehensive view of forest management that those with professional forestry backgrounds possess.

One of the dynamics that define modern American government is the tension among the executive branch, administrative agencies, interest groups, and the legislature. The policy conundrum that sometimes threatens the Forest Service and, to a lesser extent, the Bureau of Land Management provides an excellent example. Much of the recent criticism aimed at these two agencies is the result of the structure of the political and institutional environments in which they operate. Environmental and industry interest groups seek very different policies. The policy initiatives of each new administration emphasize different underlying values and approaches. Lacking consensus, House and Senate leaders wage policy through appropriations. Like Odysseus, agency leaders navigate between Scylla and Charybdis. But unlike the Greek hero, their fate is more likely a trip to federal court than an eventual homecoming.

Forest Service Chief Dale Bosworth has recently referred to implementing the complicated statutes and regulations as "analysis paralysis." Another term is "forestiosclerosis." Just as arteriosclerosis constricts the flow of blood through the arteries, forestiosclerosis occludes the management necessary to sustain healthy, resilient forests that provide the habitats, clean water, recreation, forage, cultural resources, and fiber that Americans seek from their public lands. Healthy, resilient public lands require healthy, resilient political and civic institutions that focus on the long-term public interest. In the past two decades, both conditions have been obtained only infrequently.

Success requires forging a national consensus about the public purposes that national forests and BLM lands are supposed to provide. Absent that consensus, the opposing interest groups will seek to block each other's proposals through the courts, the legislature, or administrative policy. One may argue that this kind of policy inertia was a

preferred outcome for the Constitution's framers, but it is a poor way to manage forest fires, endangered species, and insect and disease outbreaks.

Not all the agencies' problems are external. Although these broader, institutional issues frame the dilemma, there are internal management problems, such as accounting and resource and program monitoring that have been brought to light by repeated studies from the Government Accountability Office. In some cases the agencies have acknowledged the problems and attempted to implement solutions.

For the Forest Service, the complex rules that implement the national forest planning process and the appeals process for management and land-use planning decisions are largely self-inflicted. The agency and each new administration endlessly write and rewrite new regulations in hopes of removing some of the plaque that clogs the arteries.

Most forest policy leaders are coming to the conclusion that management priorities must be set through a political and legislative process that focuses on a broadly defined public interest, not through administrative rule-making.

For more than 50 years, agencies and most foresters were quite pleased to advocate the concept of multiple use to maximize professional discretion and administrative flexibility. As a management doctrine, multiple use allows professional resource managers to make most resource allocation decisions, often by playing off one interest group against the others. Agency discretion thus relied on a delicate power balance among interest groups, legislators, and the executive.

The foresters who managed the Forest Service were particularly successful in advocating and maintaining professional discretion through multiple use for the first two-thirds of the 20th century, keeping legislative oversight and statutory guidance to a minimum. But when the delicate balance among interest groups and institutions wobbled, the agencies found little direction or political cover in their legislative mandates.

At some point Congress will have to revisit the purpose of these lands because there is no consensus around these purposes or the concept of multiple use, and that lack of consensus is reflected in the lack of management on the ground. In 1960, when the Multiple Use and Sustained Yield Act passed, the population of the United States was about 178 million. Today it is nearly 300 million. The area of the National Forest System

has not changed much in the intervening 45 years. More people want more things from their national forests, and over the decades, Congress and the agencies have effectively agreed to give it to them. The assumption is that Americans can have wilderness, biodiversity, *and* economic opportunity by relying on more sophisticated and complex planning processes to allocate the uses. But from the perspective of economics, we are reaching the point of diminishing returns from planning.

The growing power of the wilderness and environmental movements in the 1960s and 1970s brought important changes to federal land management. New laws—the Clean Air Act, the Clean Water Act, the Endangered Species Act—forced BLM and the Forest Service to share authority with the Environmental Protection Agency, state environmental agencies, the Fish and Wildlife Service, and NOAA Fisheries.

Newly shared intergovernmental responsibilities and the decision-making requirements imposed by the National Environmental Policy Act make federal multiple-use land management a very complicated proposition. Resource managers now labor to make environmental analyses and impact statements “bombproof” to subsequent appeals and litigation.

Commenting on the situation in 2001, Forest Service Chief Dale Bosworth asked, Is that the way it was supposed to work? No way. When the National Forest Management Act was passed in 1976, Senator Hubert Humphrey proclaimed something to the effect that we have now taken national forest management out of the courts and given it back to the professionals. Instead, the opposite has happened. Now, judges are sitting in courtrooms and making resource management decisions based on points of law, not on conditions out in the field.<sup>1</sup>

Chief Bosworth recently told the U.S. House of Representatives Subcommittee on Forests and Forest Health that “Congress has enacted multiple laws and the Forest Service and other agencies have promulgated thousands of pages of regulations that often contain overlapping and sometimes conflicting requirements, procedural redundancies and multiple layers of interaction.”<sup>2</sup>

In his plainspoken way, former Chief Jack Ward Thomas has been telling legislators that they have been doing a poor job of setting and communicating priorities for public natural resources management. In recent testimony in the House of Representatives, he observed, “The sorely needed outcome is for the mission to be

redefined in the light of the experience of the last two decades. To leave matters as they are, is to leave the agency to ‘twist in the wind’ as a political scapegoat for Congressional refusal—or inability—to clarify matters.”<sup>3</sup>

Successful implementation requires striking a balance between legislative prescription and agency discretion. In a more perfect world the legislature, like a board of directors, would communicate a clear set of priorities to the agency managers. If the first priority is conserving biodiversity, or ensuring clean water, or making boards, the legislature should say so. Although most would agree with the intent of each current directive, the aggregate effect suggests that the agencies are supposed to do everything, everywhere, at the same time.

Policy obfuscation is common when there is little unity among representatives and senators about the public lands. Since the creation of the forest reserves and the decision to retain the public lands, most attempts at statutory reform have languished or resulted in unintended consequences. Congressional policy guidance for the national forests and public lands more often comes in the form of selectively funded budget priorities and appropriation riders that restrict administrative initiatives. Witness the recent efforts in the Interior Appropriations bill to limit federal spending for roads for the Tongass National Forest and wild horse and burro management on BLM lands.

Given the general lack of legislative consensus, some might hope for leadership from the executive branch. But the public lands policy agendas of alternating Republican and Democratic presidents in the past three decades can charitably be labeled schizophrenic. Little wonder, then, that federal land management agencies attempt to define their own priorities in what amounts to a policy vacuum, and that the courts have filled it.

What should an agency and its’ professional resource managers do when the legislature can’t agree on priorities and interest groups have fundamental value differences? One potential solution lies in reminding ourselves why we have public lands in the first place.

Our system of federal and state lands (including forests, BLM lands, parks, and wildlife refuges) was established to conserve the natural resources that were not being conserved on private and unmanaged public lands during the late 19th and early 20th

centuries. Public lands should give priority to meeting public purposes, like watershed protection and biodiversity conservation; commercial activities are appropriate on public lands when they serve public purposes and help accomplish desired resource management and protection goals.

Federal and state governments should not expect private landowners to make public purposes first and foremost in their management plans without compensation, and commercial interests should not expect public lands to meet economic development goals without assurances that nonmarket values have been adequately conserved. The purposes are different for good reason. Governments will never be as efficient as the private sector at producing fiber and forage, and private, for-profit firms will never be as effective as public agencies at stewarding nonmarket values. Regulating private firms to produce public values is as inefficient as legislating public lands to produce private goods.

A traditional solution for complex problems is an independent commission. The Public Land Law Review Commission that operated during the 1960s was the fourth such effort in our history. It was followed by the President's Advisory Panel on Timber and the Environment during the early 1970's. Few, if any, of the recommendations from those commissions have been realized. A commission can be effective if its recommendations are insightful, its timing nearly perfect, and its recommendations are supported by the legislative branch. Elevation of the issues and recommendations must coincide with the agendas of the executive and the legislative majorities—or they will be ignored or overshadowed by more urgent legislative priorities.

From a political perspective, our current set of public land policy problems won't be resolved until bipartisan consensus outweighs special interest group and partisan interests. That is most likely to occur as resource-dependent communities—those that have the most to gain and the most to lose in the current stalemate—get the attention of influential legislators.

If ever there were a time for thoughtful, bipartisan voices on public forestry to seize the day, it is now. Certainly, there is a catalytic role for citizens, not-for-profits, universities, and professional societies. A need for nonpartisan analyses from organizations such as the National Research Council and the National Academy for Public Administration is clearly indicated. It is incumbent on us all to elevate and temper

the debate by focusing on the nation's long-term public interest in sustainable forest management rather than the mud that mires our feet.

Our public lands are one of our most valuable and treasured American legacies. They are the natural estate that we will pass to subsequent generations of Americans. Their stewardship is much too important to be subject to the prevailing whipsaw of interest-group politics and short-term election cycles. As we celebrate the Centennial year of the U. S. Forest Service, still the world's foremost public conservation agency, we must resolve to provide a policy framework that will enable the agency's natural resource managers to do their job in the best interest of all of our citizens during the next century and beyond.

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<sup>1</sup> Bosworth, D. 2001. A Process in Need of Change. Speech in Rapid City, SD. August 15, 2001.

<sup>2</sup> Bosworth, D. 2001. Statement before Subcommittee on Forests and Forest Health, Committee on Resources, U.S. H.R. December 4, 2001.

<sup>3</sup> Thomas, J.W. 2001. Statement before Subcommittee on Forests and Forest Health, Committee on Resources, U.S. H.R. December 4, 2001.



Donald W. Floyd

***Professional Experience***

Professor of Natural Resources Policy and Associate Chair, Faculty of Forest and Natural Resources Management, State University of New York, College of Environmental Science and Forestry, Syracuse, NY. 1993-

Adjunct Professor of Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University 1993-

Assistant Professor and Head, Faculty of Forestry, School of Natural Resources, The Ohio State University. 1988-93.

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***Academic Background***

B.A. Humboldt State University, Arcata, CA 1974. Concentrations in journalism and natural resources.

M.S. University of Wisconsin, Madison, WI 1976. Concentrations in environmental communication and wildlife ecology.

Ph.D. University of Arizona, Tucson, AZ 1986. Concentrations in natural resources policy, rangeland ecology and political science.

***Areas of Expertise***

Natural resources policy, sustainable forestry, public participation, conflict management

**Recent Publications:**

Floyd, D.W. 2002. Forest Sustainability: The History, the Challenge, the Promise. Forest History Society. Durham, N.C.

Malmsheimer, R.W. D. Keele and D.W. Floyd. 2004. National Forest Litigation in the U.S. Courts of Appeal. J. For. 102 (2) 20-25.

Malmsheimer, R.W. and D.W. Floyd. 2004. US. Courts of Appeals Judges' Review of Federal Natural Resource Agencies' Decisions. Society and Natural Resources. 17:533-546.

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Germain, R.H., Floyd D.W. and S. Stehman. 2001. Participant perceptions of the Forest Service's public participation process. *Forest Policy and Economics* 3 (2001) 113-124.

Floyd, D.W., S.L. Vonhof and H. Seyfang. 2001. Sustainability: A Discussion Guide for Foresters. *Journal of Forestry*. 99 (2) 8-28.

**Other Relevant Positions**

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**Committee on Agriculture  
U.S. House of Representatives  
Required Witness Disclosure Form**

**House Rules\* require nongovernmental witnesses to disclose the amount and source of Federal grants received since October 1, 2003.**

**Name:**          Don W. Floyd  

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**Organization you represent (if any):** **Society of American Foresters**

1.        Please list any federal grants or contracts (including subgrants and subcontracts) you have received since October 1, 2003, as well as the source and the amount of each grant or contract. House Rules do NOT require disclosure of federal payments to individuals, such as Social Security or Medicare benefits, farm program payments, or assistance to agricultural producers:

NA

2.        If you are appearing on behalf of an organization, please list any federal grants or contracts (including subgrants and subcontracts) the organization has received since October 1, 2003, as well as the source and the amount of each grant or contract:

USDA Forest Service, Forest Inventory and Analysis User's Group (annually): average \$8,000

USDA Forest Service, Southern Research Station, Knowledge Acquisition Survey: \$8480

Please check here if this form is NOT applicable to you: \_\_\_\_\_

**Signature:**   Don W. Floyd  

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